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Date

2/12/07



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Inventor(s):</b>	Burke, et al.	<b>Confirmation No:</b>	1293
<b>Application No.:</b>	10/567,635	<b>Examiner:</b>	Unassigned
<b>Filing Date:</b>	Feb. 8, 2006	<b>Group Art Unit:</b>	Unassigned
<b>Title:</b>	Improved Anthelmintic Formulations	<b>Atty Docket No:</b>	085882.000025 (257122/0092)

**PETITION REGARDING UNAVAILABLE OR UNCOOPERATIVE INVENTORS**

An in-depth investigation is being conducted in order to determine the correct inventive entity on the above-identified patent application. Applicants believe that the inventive entity on the present application should consist of Douglas I. Hepler, Joseph M. Lockhart, Ian Cottrell, and Albert Ahn. Applicants further believe that Michael Burke and Vinay Tripathi should not be named as inventors.

The investigation to present has included phone interviews with Douglas Hepler, Joseph Lockhart, and Ian Cottrell. Steven Standley, an employ of Virbac Corp., also was interviewed by phone. Also interviewed were in-house counsel for Blue Ridge Pharmaceutical (now IDEXX), Virbac Corporation, and The Hartz Mountain Corporation. Confidential documents predating the filing date of the application also have been reviewed. Michael Burke was contacted and great efforts has been made to locate Vinay Tripathi.

Applicants currently believe that Michael Burke should not be named as an inventor on the present application. In his letter of October 17, 2006, Mr. Burke states that he does not even recall being advised of the filing of the present application. He also states unequivocally that he will not execute a declaration or any other documents, and that he does not have any right or

interest to the application. A copy of his letter of October 17, 2006, is attached. Accordingly, Mr. Burke refuses to sign any documents and is believed not to be an inventor of the claimed inventions.

Applicants currently believe that Vinay Tripathi also should not be named as an inventor on the present application. Mr. Tripathi is a former employee of Michael Burke, and presumably was also unaware of the filing of the present application. Conflicting information on Mr. Tripathi has been obtained during interviews. One interviewee stated that Mr. Tripathi considered himself an inventor, while others took the position was that Mr. Tripathi was not an inventor. Unfortunately, even with the application of extraordinary effort, Vinay Tripathi could not be located for an interview or to sign a statement regarding his status as an inventor. A private investigator was unable to locate Mr. Tripathi as described in the attached email. His former employer, Michael Burke, also had no knowledge of his whereabouts. Finally, leads for a Vinay Tripathi having a yahoo.com email address and another at the Central Drug Research Institute in Lucknow, India were pursued, but resulted in no response in the first instance and contact with the wrong Vinay Tripathi in the second. Copies of correspondence with these potential Vinay Tripathis are attached. Accordingly, Mr. Tripathi is unavailable to sign any documents. Further, the balance of the information so far obtained shows that Mr. Tripathi is not an inventor of the claimed inventions.

Applicants currently believe that Albert Ahn should remain as a named inventor on the above-identified application. Mr. Ahn, when presented with a copy of the application, identified himself as an inventor as evidenced by the enclosed questionnaire completed by Mr. Ahn. Mr. Ahn was subsequently provided, through counsel for Hartz, with a copy of the above-identified patent application, a copy of rule 56, and a declaration naming him as an inventor. Mr. Ahn failed to respond and is therefore either now unavailable or uncooperative. Accordingly, although Mr. Ahn's signature could not be obtained on the enclosed declaration, he is believed to be an inventor of the claimed inventions.

Applicants currently believe that Ian Cottrell should remain as a named inventor on the above-identified application. Mr. Cottrell, when presented with a copy of the application, identified himself as an inventor as evidenced by the enclosed questionnaire completed by Mr. Cottrell. Follow up is still necessary to determine whether Mr. Cottrell may consider himself an inventor on more than claim 27. Mr. Cottrell was subsequently provided, through counsel for

Hartz, with a copy of the above-identified patent application, a copy of rule 56, and a declaration naming him as an inventor. Mr. Cottrell failed to respond and is therefore either now unavailable or uncooperative. Accordingly, although Mr. Cottrell's signature could not be obtained on the enclosed declaration, he is believed to be an inventor of the claimed inventions.

Applicants currently believe that Joseph Lockhart should be added as an inventor on the present application. Steven Standley was interviewed regarding the contributions of Mr. Lockhart and Mr. Hepler, and he identified both men as having contributed to the technology of the present application. Mr. Lockhart was interviewed regarding his contribution to the claimed inventions after having read the application. Mr. Lockhart, due to the passage of time, was unsure of his contribution to the technology but suggested that a drug application filed with the FDA and co-authored by him should be reviewed to determine his contribution. The drug application was reviewed and bears great similarity to the application and the claimed inventions. A copy of the drug application was provide to Mr. Lockhart in order to refresh his recollection. Mr. Lockhart also was provided with a copy of the above-identified patent application, a copy of rule 56, a declaration naming him as an inventor, a statement that any error in inventorship in the international application upon which the above-identified application depends occurred without deceptive intention on his part, and an assignment. Mr. Lockhart stated that due to his travel schedule he was currently unable to sign the documents. Applicants anticipate, however, the Mr. Lockhart will execute the documents establishing him as an inventor in a short time. For now, however, Mr. Lockhart has not been able to sign the enclosed declaration.

Applicants respectfully submit that Mr. Burke refuses to sign any documents, Mr. Tripathi cannot be found, Mr. Ahn is currently unavailable, Mr. Cottrell is currently unavailable, and Mr. Lockhart is currently unavailable. Applicants further submit that Mr. Burke and Mr. Tripathi should be removed as inventors, and that Mr. Lockhart and Mr. Hepler should be added as inventors, subject to confirmation upon the conclusion of the present investigation.

Respectfully submitted,

Date: February 12, 2007

*Constance G. Rhebergen* *by permission CGB*

Constance G. Rhebergen, Reg. No. 41,267  
BRACEWELL & GIULIANI LLP  
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Houston, Texas 77208-1389  
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constance.rhebergen@bgllp.com  
Attorney for Applicants

**Attachments to Response to Notice of Missing  
Requirements Under 35 U.S.C. 371**

1. Signed Inventorship Pages – signed by Albert Ahn, Douglas Irvin Hepler, and Ian William Cottrell
2. Combined Declaration and Power of Attorney for Patent Application (U.S. Serial No. 10/637,807)
3. Letter dated October 17, 2006, from Michael H. Burke to Corey Blake
4. Private Investigator's Report and misc. emails regarding Vinay Tripathi
5. Plaintiff Virbac Corp.'s Second Amended Complaint – The Hartz Mountain Corp. v. Chanelle Pharmaceuticals; Virbac Corporation v. Chanelle Pharmaceuticals (Consolidated For All Purposes), C.A. No. 05-2488 (D.C.N.J.)

Re: U.S. Non-Provisional Patent Application titled \_\_\_\_\_  
and having U.S. Application Serial No. \_\_\_\_\_.

An inventor is one who conceived the invention. Conception of the invention is not the suggestion of the idea of the result, but of the means of accomplishing the result. One who merely helped the inventor reduce the invention to practice is not an inventor. Where there are joint inventors, an inventor is one who materially contributed to conception of the subject matter of at least one of the claims. As long as there is some quantum of collaboration or connection, inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

In order to verify each inventor contributed to the invention as claimed, we request you please review the attached application and drawings, particularly the claims, and identify which claims have subject matter you materially contributed to conceiving:

☒ I contributed to conceiving the subject matter of Claim(s): \_\_\_\_\_  
\_\_\_\_\_.

☐ I did not contribute to the conception of the subject matter any of the claims currently listed in the subject patent application.

Albert Ahn  
FULL NAME OF INVENTOR

Albert Ahn  
INVENTOR'S SIGNATURE

January 5, 2007  
DATE

10/567,635

Re: U.S. Non-Provisional Patent Application titled Improved Anthelmintic Formulations  
and having U.S. Application Serial No. 10/567,635.

An inventor is one who conceived the invention. Conception of the invention is not the suggestion of the idea of the result, but of the means of accomplishing the result. One who merely helped the inventor reduce the invention to practice is not an inventor. Where there are joint inventors, an inventor is one who materially contributed to conception of the subject matter of at least one of the claims. As long as there is some quantum of collaboration or connection, inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

In order to verify each inventor contributed to the invention as claimed, we request you please review the attached application and drawings, particularly the claims, and identify which claims have subject matter you materially contributed to conceiving:

☒ I contributed to conceiving the subject matter of Claim(s): ALL

☐ I did not contribute to the conception of the subject matter any of the claims currently listed in the subject patent application.

<u>DOUGLAS IRVIN HEPLER</u>	<u>Douglas Irvin Hepler</u>	<u>1-12-07</u>
FULL NAME OF INVENTOR	INVENTOR'S SIGNATURE	DATE

Re: U.S. Non-Provisional Patent Application titled \_\_\_\_\_  
and having U.S. Application Serial No. 10/567,635.

An inventor is one who conceived the invention. Conception of the invention is not the suggestion of the idea of the result, but of the means of accomplishing the result. One who merely helped the inventor reduce the invention to practice is not an inventor. Where there are joint inventors, an inventor is one who materially contributed to conception of the subject matter of at least one of the claims. As long as there is some quantum of collaboration or connection, inventors may apply for a patent jointly even though (1) they did not physically work together or at the same time, (2) each did not make the same type or amount of contribution, or (3) each did not make a contribution to the subject matter of every claim of the patent.

In order to verify each inventor contributed to the invention as claimed, we request you please review the attached application and drawings, particularly the claims, and identify which claims have subject matter you materially contributed to conceiving:

☒ I contributed to conceiving the subject matter of Claim(s): 27

☐ I did not contribute to the conception of the subject matter any of the claims currently listed in the subject patent application.

IAN WILLIAM COTTRELL

FULL NAME OF INVENTOR

*IWCottrell*

INVENTOR'S SIGNATURE

12/27/06

DATE

**COMBINED DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION**

(Page 1 )

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**ANTHELMINTIC FORMULATIONS**

the specification of which

☐ is attached hereto

☒ was filed on **August 8, 2003** as United States Patent Application No. or PCT  
International Application No. **10/637,807** and was amended on  
(if applicable).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR §1.56.

I hereby claim foreign priority benefits under 35 U.S.C. §119(a)-(d) or §365(b), of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designates at least one country other than the United States, listed below and have also identified below any foreign application for patent or inventor's certificate, or PCT international application having a filing date before that of the application on which priority is claimed:

<u>Country</u>	<u>Application No</u>	<u>Filed (Day/Mo./Yr.)</u>	<u>Priority Claimed</u> (Yes unless box is checked)
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

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**COMBINED DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION  
(Page 2 )**

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below

<u>Application No</u>	<u>Filed (Day/Mo./Yr.)</u>
-----------------------	----------------------------

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s), or § 365(c) of any PCT international application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

<u>Application No.</u>	<u>Filed (Day/Mo./Yr.)</u>	<u>Status</u> <u>(Patented, Pending, Abandoned)</u>
------------------------	----------------------------	--

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

**POWER OF ATTORNEY:** As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith (list name and registration numbers).

Lawrence Rosenthal, Reg. No. 24,377  
Steven B. Pokotilow, Reg. No. 26,405  
James J. DeCarlo, Reg. No. 36,120  
Matthew W. Siegal, Reg. No. 32,941  
David L. Schaeffer, Reg. No. 32,716

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COMBINED DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION  
(Page 3 )

Send Correspondence to:

STROOCK & STROOCK & LAVAN LLP  
180 Maiden Lane  
New York, New York 10038

Direct Telephone Calls to: (name and telephone number)

(212) 806-5400

Full Name of Sole or First Inventor: Michael Burke

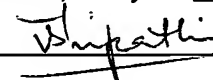
Inventor's signature:  Date: 28<sup>th</sup> Nov 2003

Citizen/Subject of: \_\_\_\_\_

Residence: c/o Chanelle Pharmaceuticals  
Athenry Road, Loughrea, County Galway, Ireland

Post Office Address: same as above

Full Name of Second Inventor, if any: Vinay Tripathi

Inventor's signature:  Date: 25<sup>th</sup> Nov - 2003

Citizen/Subject of: \_\_\_\_\_

Residence: c/o Chanelle Pharmaceuticals  
Athenry Road, Loughrea, County Galway, Ireland

Post Office Address: same as above

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COMBINED DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION  
(Page 4 )

Full Name of Third Inventor, if any Albert Ahn  
Inventor's signature: Albert Ahn Date: December 18, 2003  
Citizen/Subject of: United States  
Residence: 43 Talbot Court  
Short Hills, New Jersey 07078  
Post Office Address: same as above

Full Name of Fourth Inventor, if any Ian Cottrell  
Inventor's signature: Ian Cottrell Date: Dec. 15, 2003  
Citizen/Subject of: United Kingdom  
Residence: 10 Spencer Road  
Basking Ridge, New Jersey 07920  
Post Office Address: same as above

Full Name of Fifth Inventor, if any \_\_\_\_\_  
Inventor's signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Citizen/Subject of: \_\_\_\_\_  
Residence: \_\_\_\_\_  
Post Office Address: \_\_\_\_\_



Your Ref.      Our Ref.      Date.

Corey Blake  
Associate  
Bracewell & Giuliani, LLP  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2781  
USA

17<sup>th</sup> October 2006

Dear Mr. Blake,

I write in response to your e-mail dated October 4, 2006, which attached Patent Application Serial No. 10/567,635 for my review, as well as a Declaration for my execution in connection with the application. You also asked for my "assistance" in contacting Vinay Tripathi. For the following reasons, please be advised that I do not intend on executing the Declaration or any other documents related to the prosecution of any patent application owned by Virbac Corporation or any other entity.

First, by way of background, the application in question was filed by the Hartz Mountain Corporation ("Hartz") in February, 2006, and claims priority to an application originally filed by Hartz without my knowledge or consent, nor do I recollect being advised of the present application filing, which occurred during the pendency of litigation between Chanelle, Hartz and Virbac.

Second, as you should know, as part of the overall settlement between the parties, Chanelle agreed to assign to Hartz all of its rights in certain patent applications, including Serial No. 10/567,635. My understanding is that Hartz then entered into an assignment agreement with your client, Virbac, whereby both companies agreed to share or retain ownership rights in various patent applications, including Serial No. 10/567,635. Accordingly, neither Chanelle nor I have any ownership rights or other interests in any of the patent applications that were the subject of the settlement or assignment agreements between the parties.

Third, as per the assignment to Hartz, neither I nor Chanelle have any obligation, whether express or implied, to assist in the prosecution of any of the patent applications assigned. Given the significant amount of money that Chanelle paid to settle all of the claims against it, as well as the fact that Chanelle relinquished all of its rights in the patent applications that were the subject of the lawsuits, I

have no interest in assisting Virbac in connection with this or any of the other applications. I do not have, do not intend to assert, nor could I assert, any rights in the patent applications at issue -- those rights belong exclusively to Virbac and/or Hartz. To the extent that you would like me to execute a more formal document confirming this position, I would consider doing so, subject to attorney review.

Finally, although I continue to maintain that Chanelle has no obligation to assist Virbac or any other entity in the prosecution of the patent applications, please be advised that I have no information concerning Vinay Tripathi's current whereabouts.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael H. Burke", written over a horizontal line.

**Michael H Burke M.V.B., M.R.C.V.S.**  
**Managing Director**

**Blake, Corey**

---

**From:** Network Investigations [networkinvestigations@eircom.net]  
**Sent:** Tuesday, November 21, 2006 8:51 AM  
**To:** Blake, Corey  
**Subject:** FW: Vinay Tripathi  
**Attachments:** image001.png; image002.jpg

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**Re: Vinay Skanfar Tripathi**

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**WITHOUT PREJUDICE**

Mr. Blake,

We established that Vinay Skanfar Tripathi was born on 27<sup>th</sup> September, 1964. Unfortunately we could find nothing current on this man. There are apparently 16 Tripathi's living in Ireland. On 2<sup>nd</sup> June, 1993 he married his wife Monica born 24<sup>th</sup> November, 1967., she previously worked for Chanelle Pharmaceuticals. This couple have a 12 year old daughter. Vinay Tripathi had earnings of €58,000 when working with Chanelle Pharmaceuticals in 2002.

Vinay Tripathi was previously residing at 5 Jardin Drive, Loughrea, Co. Galway. He had a bank account with Allied Irish Bank (AIB), Loughrea Branch. This Branch gave him a mortgage to buy the above property, however the mortgage was cleared in May 2006. He had a mobile/cell phone 087 – 2117267 which seems to be no longer in use, and there is a unpaid bill for same. Other Galway addresses recorded for him are - 6 The Waterfront, Gorth Road, Loughrea, Co. Galway., and 3 Fortland Meadows, Dublin Road, Loughrea, Galway.

In August 2006 he was in living at 23 The Hawthorns, Summerhill, Nenagh, Co. Tipperary area. He was possibly employed with GLS Pharma, Lisbunny Business Park, Nenagh, Co. Tipperary during this time.

His last known employer seems to be J.G. Chemicals, Skule Hill, Fedamore, Limerick., Tel. 061 – 390045. We telephoned J.G. Chemicals and were told that Vinay Tripathi was no longer there, and had gone back to India a few months ago.

When we researched the Internet we found two individuals called Vinay Tripathi, who had a similar background to the Subject. One can be contacted at [vinaytripathi@yahoo.com](mailto:vinaytripathi@yahoo.com) and the other through the Central Drug Research Institute in Lucknow, India., and Rediff Connexions.

We did not find it necessary to speak to Michael Burke of Chanelle Pharmaceuticals, but if it is necessary we will do so with your blessing.

Regards,

T.I. Dunne,

2/11/2007

NETWORK INVESTIGATIONS LTD.

**Blake, Corey**

---

**From:** Blake, Corey  
**Sent:** Tuesday, November 21, 2006 3:14 PM  
**To:** vinaytripathi@yahoo.com  
**Subject:** Patent Application

Dear Mr. Tripathi:

I am an attorney with a U.S. law firm searching for a Vinay Tripathi who is a coinventor on a patent application for a veterinary pharmaceutical. I would appreciate your response to know whether I have contacted the correct person and apologize if I have contacted you in error.

Please feel free to contact me if you have any questions regarding this email.

Best regards,

Corey Blake  
Associate  
Bracewell & Giuliani, LLP  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2781  
T: (713) 221-1515  
F: (713) 222-3215  
[corey.blake@bracewellgiuliani.com](mailto:corey.blake@bracewellgiuliani.com)

[www.bracewellgiuliani.com](http://www.bracewellgiuliani.com)

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2/11/2007

**Blake, Corey**

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**From:** vinaycdri Tripathi [vtcdri@yahoo.co.in]  
**Sent:** Thursday, November 30, 2006 3:40 AM  
**To:** Blake, Corey  
**Subject:** U.S. Patent Application No. 10/567,635

Dear Mr. Balke

This has reference to your letter dated 27/11/06 regarding coinventor in U.S. Patent Application No. 10/567,635, having name similar to me. Sorry, I am not the person to whom you are looking for.

Yours truly

Vinay Tripathi

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ANDERSON KILL & OLICK, P.C.  
A New York Professional Corporation  
Paul E. Breene (PB 7989)  
One Gateway Center, Suite 1510  
Newark, NJ 07102  
973-642-5858  
Attorneys for Plaintiff  
Virbac Corporation

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

---

THE HARTZ MOUNTAIN CORPORATION	:	x	CIVIL ACTION NO. 05-2488 (WJM)
Plaintiff	:		
vs.	:		
	:		<u>CONSOLIDATED FOR ALL PURPOSES</u>
CHANELLE PHARMACEUTICALS	:		
MANUFACTURING LIMITED,	:		<u>PLAINTIFF VIRBAC CORPORATION'S</u>
	:		<u>SECOND AMENDED COMPLAINT</u>
Defendant.	:		

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VIRBAC CORPORATION	:	x	CIVIL ACTION NO. 05-5845 (WJM)
Plaintiff,	:		
vs.	:		
CHANELLE PHARMACEUTICALS	:		
MANUFACTURING LIMITED, et al.,	:		
	:		
Defendants.	:		

---

TO: Clerk, United States District Court  
For the District of New Jersey  
M.L. King, Jr. Federal Building & Courthouse  
50 Walnut Street  
Newark, NJ 07102

John C. Barnoski  
Cozen & O'Connor

1900 Market Street  
Philadelphia, PA 19103

Eric S. Aronson  
Douglas R. Weider  
Todd L. Schleifstein  
Greenberg Traurig, LLP  
200 Campus Drive, P.O. Box 677  
Florham Park, NJ 07932

**PLAINTIFF VIRBAC CORPORATION'S SECOND AMENDED COMPLAINT**

Plaintiff Virbac Corporation, ("Virbac"), for its Second Amended Complaint (this "Complaint") against Chanelle Pharmaceuticals Manufacturing Ltd., and Hartz Mountain Corporation, (collectively referred to herein as "Defendants"), states as follows:

**I. PARTIES**

1. Plaintiff Virbac Corporation is a Delaware corporation with its principal place of business at 3200 Meacham Boulevard, Fort Worth, TX 76137.

2. Defendant Chanelle Pharmaceuticals Manufacturing Ltd. ("Chanelle") is an Ireland corporation with its principal place of business is at Athenry Road, Loughrea, Co. Galway, Ireland. Chanelle has voluntarily accepted service through its counsel.

3. Defendant Hartz Mountain Corporation ("Hartz") is a New Jersey corporation with its principal place of business at 400 Plaza Dr., Secaucus, New Jersey 07094-3688. Hartz waived Service and has already voluntarily appeared in this action.

**II. JURISDICTION AND VENUE**

4. Subject matter jurisdiction is proper in the United States District Court for the District of New Jersey pursuant to

the provisions of 28 U.S.C. §1332 in that this matter is a civil action between citizens of different states, in which citizens or subjects of a foreign state are additional parties, wherein the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. This Court also has subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331 and § 1338 in that this matter is a civil action arising under the Constitution, laws, or treaties of the United States. This action involves violations of Federal common law Fraud on the Patent and Trademark Office.

6. This action includes both Texas and New Jersey common law claims. This Court has supplemental jurisdiction over the state common law claims under 28 U.S.C. §1367(a).

7. Plaintiff Virbac is a Texas corporation. Thus, the injury caused by Defendants' actions was felt in Texas. Defendants' conduct that resulted in Virbac's injuries occurred in Texas, New Jersey and in Ireland. Under certain Texas common law claims the situs of the injury determines the applicable state law. Under some common law claims the location of the harmful acts determines the applicable state law. For these reasons, the claims stated herein are offered under both Texas and New Jersey law.

8. This Court has personal jurisdiction over all Defendants by agreement of the Parties.

9. Venue is proper in this Court under 28 U.S.C. 1391(a) & (d).

### III. CASE SUMMARY

10. Virbac's claims arise from Defendants' misappropriation of valuable confidential information belonging to Virbac and in which Virbac had exclusive rights, all without Virbac's knowledge or approval. Chanelle received and used this information with full knowledge of Virbac's rights in and ownership of the information, as well as its confidential nature. Chanelle, and its employees, Michael Burke ("Burke"), and Vinay Tripathi ("Tripathi") used Virbac's information to develop products to be sold to the public, to file patent applications before the United States Patent and Trademark Office ("USPTO") as well as the European Patent Office ("EPO"), and to file product approval applications with the United States Food and Drug Administration ("FDA"). In addition, the Defendants made false and misleading representations about the products to the World Intellectual Property Organization ("WIPO"), located in Geneva, Switzerland. In further violation of Virbac's rights, Chanelle transferred some or all of this information to Hartz. Hartz, by and through its employees: Albert Ahn ("Ahn"), Ian Cottrell ("Cottrell"),

Arima Das Nandy ("Nandy"), and Richard Fisher ("Fisher") misappropriated and used the information owned by Virbac to file additional applications before the USPTO, EPO, and, Virbac is informed and believes, the FDA. Hartz knew, or should have known, of Virbac's ownership of and rights in the information Chanelle disclosed to it. In any event, Virbac has since advised Hartz that Virbac is the sole owner of the information. Despite this information, Hartz and Chanelle continue to pursue a course of action in direct violation of Virbac's rights.

11. In the course of their activities, and continuing through the date of this Complaint, Defendants:

- (a) have misrepresented to the public the source and ownership of the information and of the applications and products based thereon;
- (b) (have made false statements to USPTO, EPO, WIPO and FDA respecting the inventorship and ownership of claimed inventions, and the ownership of products;
- (c) have failed and refused to cease using Virbac's information;
- (d) have failed and refused to cease the development and commercialization of the products based on

Virbac's information;

(e) have failed and refused to assign to Virbac the fruits of Virbac's information, including but not limited to the subject patent and product approval applications;

(f) have failed and refused to acknowledge Virbac's rights in the information or in the products, applications, and other fruits thereof; and

(g) have disseminated Virbac's trade secrets to the public, and, in particular, to competitors and potential competitors of Virbac, enabling them to develop products competitive with products of which Virbac is the exclusive owner,

all of which acts have caused and continue to cause Virbac irreparable injury.

#### IV. FACTS

12. A nonparty, Blue Ridge Pharmaceuticals, Inc., a Delaware corporation based in North Carolina ("Blue Ridge"), was a wholly-owned subsidiary of IDEXX Laboratories, Inc., a Delaware corporation ("IDEXX"). Blue Ridge has since changed its name to "IDEXX Pharmaceuticals, Inc." (Because it was known as "Blue Ridge" during most of the time period in question, this Com-

plaint will continue to refer to it as "Blue Ridge.")

13. In 1997, Blue Ridge was developing a series of liver-flavored veterinary products. Those products were:

- (a) a product containing ivermectin for treatment and prevention of heartworm in dogs to be marketed under the trademark "IVERHART," and internally designated as "the 1G product";
- (b) a product containing ivermectin and pyrantel pamoate for prevention of heartworms, hookworms, and roundworms in dogs, internally designated as "the 2G product";
- (c) a product containing ivermectin, pyrantel pamoate, and praziquantel for the prevention of heartworms, hookworms, roundworms, and tapeworms in dogs, internally designated as "the 3G" product; and
- (d) a product containing pyrantel pamoate for the prevention and treatment of roundworms and hookworms in dogs, referred to by Blue Ridge as "the Flavored Pyrantel Product"

(collectively, the "Products").

14. The Products, which have three active ingredients, are unique and innovative because, unlike other heartworm preventatives on the market today, the Products will be the first to prevent and control hookworms, roundworms and several species of tapeworms. No other combination available on the market today controls several species of tapeworms, along with the heartworm and hookworm preventatives in one product which was capable of being economically produced in commercial volumes.

15. Blue Ridge held the Product recipes, processes, ingredients, and other confidential information not generally known to the public in confidence, and treated this confidential information as trade secrets ("Trade Secrets"), and with Virbac's support and assistance, further developed the Products.

16. Blue Ridge submitted a suitability petition for the Products, and both the filing and the FDA's response to the filing are made public (the "Filings"), but the processes, recipes and ingredients were maintained as confidential information.

17. On January 30, 1998, Blue Ridge entered into a Mutual Confidentiality Agreement with Chanelle ("Confidentiality Agreement") (Exhibit A), whereby for the purpose of a possible business venture Blue Ridge agreed to disclose to Chanelle certain confidential and proprietary information, including the Trade Secrets with the agreement that all shared information "shall

remain as the confidential and proprietary information of each party" (Exh. A, par. 1.) following the termination of the discussions of the possible business venture. Additionally, the Confidentiality Agreement required that "neither party shall use Confidential Information or disclose Confidential Information to any person, organization, or other entity for any reason." (Exh. A, par. 2.) Finally, the Confidentiality Agreement provided that the Agreement would "inure to the benefit and burden of the successors and permitted assigns of each party." (Exh. A, par. 5.)

18. On September 1999, for the purpose of acquiring competitive bids to participate in a joint business, Blue Ridge granted access to its Data Room to disclose certain proprietary and confidential information, including the Trade Secrets, to various potential research, development, distribution and/or investment partners. Possible joint venture partners were given limited access and disclosure of the Trade Secrets now owned by Virbac. Blue Ridge required all potential partners who participated in this measure of due diligence to enter into confidentiality agreements similar to the one referenced above. Blue Ridge then solicited competitive bids from potential investment partners. On information and belief, Defendants Hartz and/or Chanelle participated in this process. Virbac also participated in this process and won the bid on or about December 22, 1999.

19. Thus, as of December 22, 1999, the Trade Secrets were not known to the public or to competitors, and the Products had not been released to the public or to the veterinary products industry generally.

20. Following Virbac's successful bid, Blue Ridge entered into a "Development and Distribution Agreement" with Virbac ("Development Agreement") dated December 22, 1999 (Exhibit B). It granted Virbac "the exclusive rights to manufacture, have manufactured, market, sell and have sold the Products in the Ethical Market [i.e., the veterinary prescription market] in the Territory." (Exh. B, Par. 2(a).) The Territory for all Products except the 3G product was the entire world; for the 3G product, the Territory was the United States and Canada.

21. Virbac paid Blue Ridge \$2,000,000 in two installments as an "acquisition fee." It subsequently made further payments when various regulatory and approval milestones were met, totaling an additional \$2,250,000. Virbac also agreed to pay royalties to Blue Ridge ranging from 15% to 1% of net sales, depending on the Product and changes in competitive conditions as time passed.

22. The parties acknowledged the confidential and proprietary nature of the Trade Secrets. Paragraph 10 of the Development Agreement provided:

No proprietary information disclosed by either party to the other in connection with this Agreement, including, without limitation, the Know-How, shall be disclosed to any person or entity other than the recipient party's employees and contractors directly involved with the recipient party's use of such information who are bound by written agreements to protect the confidentiality of such information. Such information shall be used only for the purposes contemplated by this Agreement, and such information shall otherwise be protected by the recipient party from disclosure to others with the same degree of care accorded to its own proprietary information but not less than a reasonable degree of care. [Exh. A, Par. 10.]

Know-How" was defined as "all technical information, data, studies, formulae, processes and other proprietary information of [Blue Ridge] now existing relating to Products including, without limitation, all formulation, manufacturing, scientific or clinical data cited, referenced or contained in any application for any Registration applied for by BRP." (Exh. B, Par. 1(e).) Trade Secrets as defined in this Complaint includes the Know-How.

23. The confidential and proprietary nature of the Trade Secrets, including the Know-How, was further acknowledged by the parties' treatment of it as protectable intellectual property requiring a license for its use:

[Blue Ridge] shall be the sole and exclusive owner of the Know-How. [Blue Ridge] shall have the exclusive, worldwide right, exercisable in its sole discretion and at its sole expense, to file, prosecute, defend and maintain patents and patent applications with respect to the Know-how (collectively, "[Blue Ridge] Patent Rights"). [Blue Ridge] hereby grants to [Virbac] an exclusive, worldwide, royalty-free license un-

der the Know-How and the [Blue Ridge] Patent Rights, exercisable during the Term, to make, have made, use, sell and have sold Products in the Territory. [Exh. B, Par. 7(a).]

An "exclusive" license excludes not only third parties; it also excludes the licensor from using the intellectual property for its own commercial purposes. Virbac's exclusivity was extended to include any improvements Blue Ridge might develop. (Exh. B, Par. 7(c).)

24. The Products based on the Trade Secrets were at a very advanced state of development as of December 22, 1999. Although scale-up manufacturing remained to be developed, and while testing continued in connection with regulatory and product development, all of the material scientifically and technologically innovative work on the Trade Secrets and the Products was completed by that date. Anyone possessing the Trade Secrets as they existed on December 22, 1999, could develop the Products with little additional scientific discovery or inventive contribution.

25. Blue Ridge also granted Virbac an exclusive license to the trademark "IVERHART" ("Trademark") in the Territory for the term of the agreement. Blue Ridge secured U.S. registration for IVERHART in 2001. (Exh. B, Par. 11(a).)

26. Paragraph 12 of the Agreement provided for special protection for Virbac's exclusive Product rights in the United

States and Canada:

During the Term, neither [Virbac] or its affiliates nor [Blue Ridge] or its Affiliates shall, directly or indirectly, develop, manufacture, market or sell, or assist any third party in developing, manufacturing, marketing or selling, any Competitive Products in the United States or Canada. \* \* \* The parties agree that the restrictions contained in this Section 12 are reasonable for the purpose of preserving the exclusive rights granted to [Virbac] hereunder and for maximizing the sale of Products hereunder. [Exh. B, Par. 12; emphasis supplied.]

"Competitive Product" was defined as "a product having substantially the same formulation as a Product." (Exh. B, Par 1(k).)

27. The Development Agreement imposed upon Virbac a number of duties typically required of exclusive licensees:

- (a) Virbac was required to use "commercially reasonable efforts to create a market for, promote, supply the demand for and obtain maximum sales of the Products throughout all areas of the Territory," including advertising, exhibitions, and the like. In this connection, the Development Agreement provided that: "In determining the commercial reasonableness of [Virbac's] efforts, it shall be assumed that neither [Virbac] nor any of its Affiliates market or sell any products that compete with the Products in the Territory." (Exh. B, Par. 4(a).)

- (b) Virbac was required to produce all promotional and advertising materials, artwork, packaging, and labeling. (Exh. B, Par 4(b).)
- (c) Virbac was required to select and secure a supply of the Products from FDA-approved manufacturers in accordance with commercial Good Manufacturing Practices and the Products own registrations. (Exh. B, Par. 4(c).) It was also responsible for dealing with the FDA on all issues relating to manufacturing compliance and quality assurance, packaging and labeling, promotional compliance, and medical issues. (Exh. B, Par. 5(b)(i).)
- (d) Virbac was responsible for post-approval analytical testing and stability work for the Products. (Exh. B, Par. 4(d).)
- (e) Virbac was responsible for obtaining product approvals outside of the United States. (Exh. B, Par. 5(b)(i).)

28. At great expense, Virbac complied with all of its obligations under the Development Agreement. It also expended large amounts of money preparing to comply with these terms at such time as Products were approved by the FDA.

29. In substance, form, and intent, the Development Agreement transferred almost all worldwide rights and duties respecting the Trade Secrets and the Products from Blue Ridge exclusively to Virbac, with the exception of the territorial limitation for the 3G product to the U.S. and Canada, and certain regulatory requirements required of a veterinary product's owner. The parties expressly provided that they would act to protect the value of these exclusive rights in Virbac's hands. The "exclusive" license excludes not only third parties, it also excludes the licensor from using the intellectual property for its own commercial purposes.

30. In September 2001, IDEXX and Blue Ridge requested permission from Virbac to disclose to Chanelle the terms of the Development Agreement. This request included the contract terms only, and not the Trade Secrets or Products exclusively licensed to Virbac in the Development Agreement. Virbac and Blue Ridge executed a letter agreement dated September 11, 2001 (Exhibit C), which stated: "This letter reflects our understanding that [Virbac] consents to the disclosure by [Blue Ridge] to Chanelle Pharmaceuticals Manufacturing Ltd. of the terms of the Development and Distribution Agreement." (Emphasis supplied.)

31. Virbac is informed and believes that Blue Ridge did disclose the terms of the Development Agreement to Chanelle by

providing Chanelle with a copy of it. Thus, Chanelle was aware of the identity of the Products. More importantly, it was aware that Blue Ridge had granted Virbac exclusive worldwide rights to the Products and the Trade Secrets (with the noted exceptions).

32. In November 2001, Blue Ridge began negotiating with Defendant Hartz to license Virbac's Products because Hartz had access to a mass segment of the animal pharmaceuticals market through its various distribution networks.

33. On December 13, 2001, Blue Ridge and Virbac entered into a Product Transfer Agreement whereby Blue Ridge transferred its entire interest in the Products and Trade Secrets to Virbac. (Exhibit D.) In return for royalty payments (Exh. D, Par. 3), the Product Transfer Agreement provided that Blue Ridge:

hereby sells, assigns and transfers to [Virbac], free and clear of any and all liens and encumbrances, all of [Blue Ridge's] worldwide rights, title and interest in and to the Products, including all of [Blue Ridge's] Know-How, goodwill, Registrations, ANADAs, NADAs [new animal drug application] and INADs [investigational new animal drug application] relating to the Products and the Iverhart.com URL, and in and to the trademark IVERHART[.] Following the date hereof BRP shall have no further obligations with respect to the development, registration, manufacture or sale of Products except as specifically provided in this Agreement. [Exh. D, Par. 3]

34. Blue Ridge represented and warranted that "to the best of its knowledge" it had "not disclosed any proprietary informa-

tion relating to the Products, including the Know-How and the contents of any applications for Registrations, to any person or entity . . . ." other than Virbac and the FDA. (Exh. D, Par. 6(viii).) Further, Paragraph 8 provided that "[Blue Ridge] shall not disclose to any person other than [Virbac] any proprietary or confidential information relating to the Products, including the Know-How and the contents of any applications for Registrations." (Exh. D, Par. 8.)

35. The Product Transfer Agreement also repeated Blue Ridge's promise that "neither [Blue Ridge] nor its Affiliates shall, directly or indirectly, develop, manufacture, market or sell, or assist any third party in developing, Manufacturing, marketing or selling, any product having substantially the same formulation as a Product or any Pyrantel Combination Product ('Competitive Product')." (Exh. D, Par. 9.)

36. Virbac is informed and believes that Chanelle was aware of the execution by Virbac and Blue Ridge of the Product Transfer Agreement, and of its material terms.

37. Virbac's exclusive right to the Products and Trade Secrets, and its subsequent outright purchase thereof, allowed Virbac to enjoy a competitive advantage over other competing veterinary medicine pharmaceutical manufacturers. Virbac's exclusive right to use and own information relating to the chemi-

cal composition and method of manufacture of each of the Products gave Virbac a distinct advantage over its competitors. The Development and Product Transfer Agreements with Blue Ridge and IDEXX also ensured that it would enjoy efficiencies in time-to-market and the development of manufacturing that its competitors would lack. Virbac maintained and has continued to maintain the confidential nature of the Trade Secrets associated with the Products.

38. Throughout this period and continuing to date, Virbac invested substantial sums of money, time and effort in further developing and refining its manufacturing techniques and methods in preparation for the sale of the Products. This significant investment of resources was in addition to the millions of dollars already paid to Blue Ridge pursuant to the Development Agreement.

39. Virbac is informed and believes that, in 2002, Chanelle falsely represented to Hartz that it (Chanelle) owned and developed the Trade Secrets and Products. It conveyed some or all of the Trade Secrets to Hartz pursuant to a "Mutual Confidentiality Agreement" dated as of January 22, 2002.

40. Chanelle and Hartz used Virbac's information to develop products to be sold to the public, to file patent applications before the United States Patent and Trademark Office

("USPTO"), to file an application with the World Intellectual Property Association ("WIPO"), to file international patent applications under the provisions of the Patent Cooperation Treaty ("PCT"), and to file product approval applications with the United States Food and Drug Administration ("FDA").

41. On or around January 10, 2003, Chanelle and Hartz entered into a "Confidential License and Supply Agreement" whereby Chanelle granted Hartz the right to sell the Products, and in which they divided the world into various exclusive and non-exclusive (joint) territories for their respective marketing of the Products. The "Confidential License and Supply Agreement" further provided that Chanelle would manufacture the Products and sell them to Hartz.

The "Confidential License and Supply Agreement" stated in its preamble that Hartz and Chanelle had developed "various products" described in Schedule 1 to the Agreement. These were the products already developed by Blue Ridge and Virbac and transferred exclusively to Virbac. The parties recognized that they were competitively valuable, and they agreed to keep information exchanged between them confidential in Paragraph 15 thereof.

42. Virbac is informed and believes that Hartz knew or should have known that the Chanelle's statements as to the ownership and development of the Trade Secrets and Products were

false. If Hartz did not know of their falsity at the time, it became aware of their falsity later, when Virbac advised it of the true circumstances of the ownership and development of the Trade Secrets and the Products.

43. Despite the fact that no employee of either Chanelle or Hartz invented or originally developed the subject matter of the Trade Secrets and the Products (rather, Blue Ridge and Virbac did), Defendants Burke and Tripathi, and Ahn, Cottrell, Nandy, and Fisher (the "Claimed Inventors"), each of whom was an employee of Chanelle or Hartz, swore under oath that they were inventors of the Products when they variously filed the following U.S. Patent Applications:

-- U.S. Patent Application Serial No. 10/637,807 (Burke, Tripathi, Ahn, Cottrell)

(assigned to Hartz and Chanelle)

-- U.S. Patent Application Serial No. 10/800,407 (Cottrell, Nandy, Ahn, Fisher)

(assigned to Hartz and Chanelle)

("U.S. Applications") on or about August 8, 2003.

44. The U.S. Applications were published on or about February 10, 2005 as U.S. Patent Application Publication No. US2005/0032718 and U.S. Patent Application Publication No. US2005/0032719, respectively. Virbac, the rightful owner of the Trade Secrets and Products, was not listed as the inventor,

owner, or assignee of record in the U.S. Applications.

45. Defendants also filed International Patent Applications with the EPO under the provisions of the Patent Cooperation Treaty, as follows:

-- Serial number PCT/US2004/025000 (Cottrell, Nandy, Ahn, Fisher)

(assigned to Hartz and Chanelle)

-- Serial number PCT/US2004/025005 (Burke, Tripathi, Ahn, Cottrell)

(assigned to Hartz and Chanelle)

-- Serial number PCT/US2004/025006 (Burke, Tripathi, Ahn, Cottrell)

(assigned to Hartz and Chanelle)

("PCT Applications") on or about August 3, 2004. The PCT Applications were published on or about February 24, 2005 as WO2005/016356, WO2005/016357, and WO2005/016358, respectively. Virbac, the rightful owner of the Products, was not listed as the inventor, owner, or assignee of record in the PCT Applications.

46. The publication of the U.S. Applications and the PCT Applications were false and deceptive representations to the public respecting the source and ownership of the Products. The Claimed Inventors misrepresented that they were inventors of the Products, and Chanelle and Hartz misrepresented that they were the owners of the U.S. Applications and the PCT Applications,

and hence, of rights to the Products. Moreover, these publications represented the unauthorized and wrongful disclosures of the Trade Secrets by Defendants.

47. Inventors and assignees have a duty to disclose to the patent examining bodies any and all information material to the examination of the application. They failed to do so prior to the time these applications were published and have continued to willfully and intentionally pursue their patent applications.

48. The processes and products in the U.S. Applications and the PCT Applications submitted by Defendants are substantially identical to the Trade Secrets disclosed to Defendants Hartz and Chanelle. In fact, they are, in form and substance, recaptulations of significant portions of the Trade Secrets with no material inventive contribution by the claimed individual inventors.

49. The patent examiner at the USPTO initially issued both U.S. Applications an "office action" and a "final office action," which initially rejected the patent claims asserted by Defendants in the U.S. Applications.

50. However, as of November 30, 2005 the Application No. 10/637,807 was granted a Notice of Allowance and Fee(s) Due ("Notice of Allowance") (Exhibit E) and upon payment of fees to-

taling \$1,700.00 Defendants will be awarded a patent for the Products, which rightfully belong to Plaintiff Virbac.

51. Defendants' actions have already irreparably damaged Virbac by exposing the Trade Secrets that are associated with the Products. That damage will be greatly compounded by the loss of Virbac's ability to obtain patent protection for the Products, and further exacerbated by Defendants' unfairly profiting from Virbac's efforts.

52. Defendants have also further compounded this problem and exposed Virbac to additional irreparable and immediate harm by committing fraud on the USPTO and EPO. Accordingly, if this Court does not enjoin Defendants from their continued wrongful activity and compel the assignment of the pending U.S. Patent, the remaining U.S. Application and the PCT Applications to Virbac, the value of Virbac's exclusive rights to the 2G and the 3G Products for which it bargained in the Development and the Product Transfer Agreements will be completely destroyed.

53. The Defendants did not disclose under their duty of candor to the USPTO all material information regarding patentability, including the fact that the Defendants received the Trade Secrets from Blue Ridge. Yet, the individual Defendants maintained that they were the inventors in each of the U.S. Applications. The patent examiner at the USPTO has not issued an

"office action," or a statement regarding patentability on behalf the USPTO, with respect to U.S. Patent Application Publication No. US2005/0032719 at this time. The patent examiner at the USPTO has issued; however, an initial office action and a "final" office action which reject the patent claims asserted by Defendants in the U.S. Application Publication Number US2005/0032718. Defendants have already made limiting amendments and declarations under oath that can seriously affect the scope of protection of any claims that issue. Moreover, in response to the examiner's indication after the Defendants' amendments and arguments following the final office action, the Defendants filed a Request for Continued Examination ("RCE"). Amendments to the claims and arguments that also limit the scope of protection were part of the RCE filing. On or about September 20, 2005, the examiner issued another office action in response to the RCE in which the examiner indicated that all but two claims are allowable. If the claims are allowed to issue without the filing of another application claiming priority to U.S. Application Publication Number US2005/0032718, Virbac will lose some of its rights to prevent competitors from making, manufacturing, using, selling, or offering for sale the subject matter disclosed in the U.S. Applications. Moreover, Virbac will lose the ability to recapture some of the scope of protection lost through the limiting amendments and arguments made

by the Defendants. Furthermore, if the Defendants choose to let the claims indicated as allowable issue as a patent, Virbac will be at risk of losing its ability to commercialize and sell the Products it purchased and further developed without the threat of being sued for infringement.

#### **V. CAUSES OF ACTION**

54. All conditions precedent to Plaintiff's claims have been performed or will be performed.

55. Plaintiff asserts that Texas law applies to the causes of action because the situs of Virbac's Trade Secrets is at its headquarters in Fort Worth, Texas. The harm suffered by Virbac as a result of Defendants' misappropriation of Virbac's Trade Secrets was experienced at its headquarters in Fort Worth, Texas. Texas has a substantial interest in preserving and protecting the confidential information of its residents, like Virbac in this case. However, Virbac can also state enforceable claims under the laws of New Jersey should the Court determine that those laws apply. Therefore, as explained previously in paragraph 7, Virbac presents its causes of action under the laws of both States where applicable.

#### **Count I.** **Misappropriation of Trade Secrets**

56. The foregoing paragraphs are incorporated by refer-

ence.

57. The Trade Secrets associated with the Products, prior to their commercialization by Virbac, were and are trade secrets under Texas and New Jersey laws. Virbac had exclusive rights to Trade Secrets, as the exclusive licensee, and later as sole owner, Virbac took precautions to maintain the secrecy of those Trade Secrets, and Defendants knowingly misappropriated those Trade Secrets to the detriment of Virbac.

58. Chanelle acquired the Trade Secrets, including the confidential subject matter of the Development Agreement and Product Transfer Agreement pertaining to the Products, through its course of dealings with Blue Ridge and IDEXX. After such acquisition of Trade Secrets, Chanelle, Burke, and Tripathi had notice of Virbac's exclusive ownership of the Trade Secrets through their knowledge of the Development Agreement and of Virbac's course of dealings with Blue Ridge and IDEXX. Hartz acquired the Trade Secrets through its course of dealings with Chanelle and was either aware of Virbac's rights in the Trade Secrets, or became aware of them at a later date.

59. Defendants used Virbac's Trade Secrets and converted them to their own purposes.

60. Defendants' misappropriation of Virbac's Trade Secrets

was intentional, willful and malicious. Therefore, to prevent this type of conduct in the future, Virbac is entitled to recover punitive damages from Defendants.

61. Defendants' actions constitute misappropriation of trade secrets under Texas law. Additionally, Virbac had acquired exclusive licensee rights and ownership of the Trade Secrets, Chanelle and Hartz used and / or disclosed Virbac's Trade Secrets after acquiring the Trade Secrets with notice of Virbac's ownership, and as a result Virbac has suffered significant damages.

62. Defendants' actions constitute misappropriation of trade secrets under New Jersey law. Chanelle and Hartz were aware of Virbac's ownership of the Trade Secrets, Hartz negotiated for distribution of the Products that employ the Trade Secrets from its New Jersey headquarters, Chanelle and Hartz conducted meetings in New Jersey regarding Virbac's Trade Secrets, Chanelle and Hartz were aware of Virbac's exclusive licensee rights and subsequent ownership of the Trade Secrets protected by the Distribution Agreement and PTA, and Chanelle and Hartz used Virbac's Trade Secrets in preparing the U.S. Applications and PCT Applications. Through Defendants' actions, Virbac was harmed.

Count II.

**THEFT LIABILITY ACT: Tex. Civ. Prac. & Rem. Code §§134.001-134.005, Tex. Penal Code § 31.05**

63. The foregoing paragraphs are incorporated by reference.

64. Hartz and Chanelle developed, used, received and had knowledge of trade secrets and confidential and proprietary information of Virbac, including, among other things, confidential formulas, methods and procedures for specialized products. Virbac has made and continues to make reasonable efforts to maintain the secrecy of these trade secrets and confidential and proprietary information, which Hartz and Chanelle obtained in confidence.

65. Hartz and Chanelle have stolen and wrongfully disclosed, communicated, and/or transmitted and used trade secrets and confidential and proprietary information of Virbac. At the time of their disclosure and use, Hartz and Chanelle knew or had reason to know that they had acquired this knowledge of the trade secrets and confidential and proprietary information under circumstances giving rise to a duty to maintain the secrecy of those trade secrets and confidential and proprietary information.

66. Virbac has not given express or implied consent to Hartz or Chanelle to disclose, communicate, transmit, or use

Virbac's trade secrets and confidential and proprietary. Any such use by Hartz or Chanelle was and continues to be unauthorized.

67. Hartz and Chanelle's theft and misappropriation of the trade secrets and confidential and proprietary information of Virbac was fraudulent and/or malicious.

68. As a direct and proximate result of Hartz and Chanelle's conduct, Virbac has suffered damages, including attorneys' fees, which continue to accrue, in an amount to be proved at trial.

69. As a result of the harm caused by Hartz and Chanelle's fraudulent and malicious conduct, Virbac is entitled to exemplary damages.

**Count III.**  
**Common Law Unfair Competition**

70. The foregoing paragraphs are incorporated by reference.

71. Virbac acquired and assisted in the creation of the Trade Secrets and the Products through the employment of extensive time, labor, skill, and money.

72. Defendants have misappropriated, used, and commercialized the Trade Secrets and Products in competition with Virbac.

They have attempted to gain a special advantage over Virbac by filing patent applications and thereby attempting to exclude Virbac from the market.

73. Defendants have unfairly competed by profiting from the significant sweat of the brow of Virbac. Virbac has expended substantial sums of money and time in developing the market and prosecuting the process of obtaining approvals from various government agencies. Defendants have attempted to unfairly take advantage of Virbac's significant efforts.

74. Because of Defendants' unfair competition, Virbac has lost the ability to protect the Trade Secrets associated with the Products and has suffered commercial damage and injury.

75. Defendants' misappropriation of Virbac's Trade Secrets constitutes a breach of the tort of unfair competition under Texas law.

76. Because of Defendants' unfair competition, Virbac has lost the ability to protect the Trade Secrets associated with the Products and has suffered commercial damage and injury, which was felt in Texas.

77. Accordingly, under Texas law, Virbac is entitled to actual and exemplary damages, as well as attorneys' fees.

78. Defendants' violations of New Jersey law by misappropriating Trade Secrets in competition constitute a violation of unfair competition under New Jersey law. Additionally, the Products and Trade Secrets have a unique pecuniary interest derived from Virbac's time, effort and money, which gave Virbac a business advantage over its competitors. Once acquired, Defendants misrepresented that the Products as well as the methods and/or process of producing the Products were their own. Defendants failed to properly acquire the Trade Secrets pertaining to the Products for valid consideration, develop it, or refine it.

79. A substantial amount of Defendants' conduct leading to the injury suffered by Virbac occurred in New Jersey and because of Defendants' unfair competition, Virbac has lost the ability to protect the Trade Secrets associated with the Products and has suffered commercial damage and injury. New Jersey has a substantial interest in regulating the activities of corporations registered in its state and their partners, and the business that is conducted in New Jersey.

**Count IV.**  
**Conversion**

80. The foregoing paragraphs are incorporated by reference.

81. Virbac owned, possessed and had the right to immediate

possession of personal property consisting of the Products and the Trade Secrets.

82. Defendants have accordingly converted property belonging to Virbac, which included the Trade Secrets associated with the Products covered by the Development Agreement and Product Transfer Agreement. Defendants wrongfully and intentionally, and unlawfully exercised dominion and control over Virbac's property inconsistent with the rights of Virbac and without just cause.

83. Virbac has suffered injury as a result of the conversion. Virbac is entitled to the return of its property through the assignment of the U.S. Applications and the PCT Applications, together with equitable relief and/or damages for the injury caused by Defendants.

84. Defendants' conversion and theft of Virbac's intellectual property and their fraudulent filing of the U.S. Applications and the PCT Applications was an intentional, willful and malicious unauthorized exercise of ownership and control over Virbac's property, and as a result has excluded Virbac from exercising its dominion over its intellectual property. Therefore, to prevent this type of conduct in the future, Virbac is entitled to recover punitive damages from Defendants.

85. Defendants' actions constitute conversion under both Texas and New Jersey laws.

**Count V.**  
**Tortious Interference with Contract**

86. The foregoing paragraphs are incorporated by reference.

87. The Development Agreement between Blue Ridge and Virbac gave Virbac the exclusive right to "make, have made, market and sell" the Products. Virbac also acquired the "exclusive" right and use of the Trade Secrets in the Development Agreement.

88. Blue Ridge disclosed to Defendant Chanelle the terms of the Development Agreement conveying exclusive rights in the Products and Trade Secrets to Virbac. Virbac is informed and believes that Chanelle was also aware of the existence and material terms of the Product Transfer Agreement. At all times relevant to this lawsuit, Defendant Chanelle was aware of Virbac's exclusive rights in the Products and/or Trade Secrets. Virbac is informed and believes that Hartz knew about Virbac's exclusive rights in and ownership of the Products and Trade Secrets, or became aware of them prior to the date of this lawsuit.

89. With full knowledge of Virbac's exclusive rights in the Products and Trade Secrets, Defendants willfully and inten-

tionally acted to interfere with the Development Agreement and/or the Product Transfer Agreement by: (i) using the Trade Secrets; (ii) developing and making Products; (iii) seeking to appropriate exclusive rights to itself, and to exclude Virbac from the market, by filing patent applications on the Products; (iv) disclosing the Trade Secrets and Products to the public through the publication of their patent application filings and disclosures; and (v) preparing to commercialize the Products in illegal competition with Virbac. Defendants were not privileged to commit, or justified in committing, any of these acts. Taken singly and together, these acts were intended to, and had the effect of, destroying Virbac's ability to exercise its contractual rights and Blue Ridge's ability to fulfill its contractual obligation to convey exclusive rights in and good title to the Products and Trade Secrets.

90. Each of these acts has proximately caused Virbac actual damage and loss in a substantial and unliquidated amount by depriving it of the benefit of the exclusive rights conveyed to it in the Development Agreement and/or the Product Transfer Agreement. Defendants' intentional interference with contract was intentional, willful and malicious. Therefore, Virbac is entitled to recover punitive damages from Defendants.

91. Defendants' actions constitute tortious interference

with contract under both Texas law and under New Jersey laws.

**Count VI.**

**Tortious Interference with Prospective Economic Advantage  
or Prospective Business Relations**

92. The foregoing paragraphs are incorporated by reference.

93. As a result of the Development Agreement and/or the Product Transfer Agreement, Virbac had a reasonable expectation that it would continue to enjoy the economic benefits of its exclusive rights in the Products and Trade Secrets. It reasonably anticipated that the veterinary and over-the-counter market would find the Products highly desirable, and that its exclusive rights would enable it to enter into economically advantageous contracts, agreements, and business relationships with its customers and others.

94. With full knowledge of the reasonable probability that Virbac's exclusive rights in the Products and Trade Secrets would enable it to enter into business relationships and contracts, Defendants willfully and intentionally acted to interfere with Virbac's entry into such relationships by: (i) developing and making the Products; (ii) disclosing the Trade Secrets to the public through their patent application filings and disclosures; (iii) seeking to appropriate exclusive rights to itself, and to exclude Virbac from the market, by filing for pat-

ent applications on the Products ; and (iv) preparing to commercialize the Products in illegal competition with Virbac. Defendants were not privileged to commit, or justified in committing, any of these acts. Taken singly and together, these acts were intended to, and had the effect of, interfering with Virbac's ability to enter into advantageous business relations and contracts arising out of the exclusive rights acquired in the Development Agreement and/or the Product Transfer Agreement.

95. Defendants' actions constitute tortious interference with prospective economic advantage and business relations under Texas law and the laws of New Jersey as Virbac had some reasonable expectation of economic advantage, Defendants acted intentionally and without justification, Defendants' interference caused the loss of prospective gain for Virbac; and Virbac has been damaged.

96. Each of these acts has proximately caused Virbac actual damage and loss in a substantial and unliquidated amount by depriving it of the benefit of the reasonably anticipated advantageous business relations and contracts. Defendants' intentional interference with contract was intentional, willful and malicious. Therefore, Virbac is entitled to recover punitive damages from Defendants.

97. Each of these acts has proximately caused Virbac ac-

tual damage and loss in a substantial and unliquidated amount by depriving it of the benefit of the reasonably anticipated advantageous business relations and contracts. Defendants' intentional interference with contract was intentional, willful and malicious. Therefore, Virbac is entitled to recover punitive damages from the Defendants.

**Count VII.**  
**Conspiracy**

98. The foregoing paragraphs are incorporated by reference.

99. Defendants have intentionally and willfully combined together and agreed to steal Virbac's confidential information covered by the Development Agreement and the Product Transfer Agreement, including the Trade Secrets associated with the Products. Defendants' misappropriation or conversion of Virbac's Trade Secrets has destroyed Virbac's advantage over its competitors and has destroyed the value of its confidential information covered by the Development Agreement and the Product Transfer Agreement, including the Trade Secrets associated with the Products. As a direct result of Defendants' actions in furtherance of this conspiracy, Virbac has suffered consequential damages, as a result of the overt actions of one or more of the Defendants.

100. Defendants' actions constitute conspiracy under both Texas and New Jersey laws.

**Count VIII.**  
**Breach of Contract**

101. In 1998, Defendant Chanelle entered into a Mutual Confidentiality Agreement (the "Confidentiality Agreement") with Blue Ridge regarding the confidential processes and recipes for the Products. Virbac was a third party beneficiary to the Confidentiality Agreement because Blue Ridge was entrusted with protecting Virbac's Trade Secrets.

102. In breach of the Confidentiality Agreement, Chanelle subsequently represented to Hartz that it owned and could manufacture the Products.

103. The Confidentiality Agreement is governed by Delaware law. Pursuant to Delaware law, Defendant Chanelle has breached the terms of the Confidentiality Agreement by disclosing the confidential information to Hartz. Pursuant to the express terms of the Confidentiality Agreement, "Each party hereby acknowledges that no right, title or interest in and to said Confidential Information is intended to be transferred and shall not be transferred by this Agreement." Despite the express terms of the Confidentiality Agreement, Chanelle disclosed Virbac's Trade Secrets to Hartz, and Hartz subsequently misappro-

priated such Trade Secrets as more fully discussed above. As a direct result of Defendants' actions, Virbac has suffered damages.

104. Defendant Chanelle's actions constitute breach of the Confidentiality Agreement under Delaware law.

Count IX.

**Fraud on the U.S. Patent and Trademark Office**

105. The foregoing paragraphs are incorporated by reference.

106. Defendants, by and through the Claim Inventors, engaged in fraud on the USPTO and the WIPO by claiming under oath that they invented the subject matter of the U.S. Applications and the PCT Applications. The sworn statements were knowingly false because the subject matter of the U.S. Applications and the PCT Applications were disclosed in violation of their non-disclosure obligations in the Development Agreement, the PTA, and other confidentiality agreements with Defendants Chanelle and Hartz. The USPTO and the WIPO relied on the sworn statements by Defendants as evidenced by the fact that the Claimed Inventors have been listed as the inventors in the U.S. Applications and the PCT Applications.

107. Defendants Chanelle and Hartz also committed fraud by claiming ownership through assignments of the U.S. Applications

and the PCT Applications and by filing said assignments for recordation by the USPTO and WIPO. Defendants Chanelle and Hartz have been unjustly enriched by the USPTO's and WIPO's reliance on the Defendants' misrepresentations as inventors of the Products and the Product Lines because the USPTO and the WIPO accepted the assignments to Defendants Chanelle and Hartz as valid. Virbac has been damaged by Defendants' fraud and will continue to be damaged as long as Defendants continue to benefit from a pending patent that rightfully belongs to Virbac, Virbac cannot prosecute the remaining U.S. Application and the PCT Applications. Defendants' actions in this regard constitute fraud on the PTO and the WIPO under federal common law.

108. Virbac will also show that Defendants' fraud and misrepresentations were made intentionally, or alternatively, were made with reckless disregard for the actual truth of the matters asserted. Under these circumstances, Virbac should recover punitive damages from Defendants in order to prevent this kind of conduct from occurring in the future.

**Count X.**  
**Injunctive and Other Equitable Relief**

109. The foregoing paragraphs are incorporated by reference.

110. Virbac has suffered and will continue to suffer ir-

reparable harm absent the entry of temporary, preliminary, and permanent injunctive relief. This irreparable injury includes, but is not limited to:

- (a) Continued disclosure of the Trade Secrets;
- (b) Continued claims to ownership of the Trade Secrets and the Products;
- (c) Continued commercialization of Products belonging exclusively to Virbac;
- (d) Continued threat of acquiring patents pursuant to the U.S. Applications and the PCT Applications which would cover the Products and threaten Virbac's ability to commercialize and sell the Products; and
- (e) Continued threat of the issuance of patents which would be invalid because of Defendants' fraud on the USPTO and EPO, and, absent competent and truthful correction thereof, the likelihood that no patent properly assigned to Virbac will issue,

resulting in, at best, a total loss of the value of the Trade Secrets and Virbac's rights in the Products resulting from exclusivity, and, at worst, Virbac's ability to commercialize and

sell the Products belonging exclusive to it at all without the risk of infringing the patents sought by Defendants.

111. Virbac is without an adequate legal remedy to cure the irreparable harm caused by Defendants' actions. If Defendants are permitted to continue their illegal course of conduct, Virbac may be prevented from using its Trade Secrets and Products at all into the indefinite future, and will at a minimum be deprived of the value for which they bargained in acquiring them. The amount of pecuniary loss to Virbac is uncertain of precise calculation.

112. Virbac is likely to succeed on the merits of its claims against Defendants. Virbac's exclusive ownership of the Trade Secrets and the Products is unambiguous. Chanelle's misappropriation thereof, and its transmission of this information to Hartz, is similarly beyond dispute, and each parties' use of this information to claim inventorship and ownership of Trade Secrets and Products, is of public record. All elements of each cause of action will be established by a preponderance of the evidence.

113. The balance of equities strongly favors Virbac. Virbac has documented rights in the Trade Secrets and Products, and Defendants have none.

114. Virbac respectfully requests that this court issue, on

appropriate motion, a temporary, preliminary, and permanent injunction:

- (a) ordering Defendants to assign all rights they may have in the U.S. Applications and the PCT Applications to Virbac;
- (b) enjoining Defendants and their employees, agents or other representatives and all persons in active concert or participation with Defendants or under their authority from representing that they are the owners, title holders or inventors of the subject matter in the U.S. Applications and the PCT Applications;
- (c) enjoining Defendants and their employees, agents or other representatives and all persons in active concert or participation with Defendants or under their authority from registering, making, selling or otherwise distributing the Products;
- (d) enjoining Defendants and their employees, agents or other representatives and all persons in active concert or participation with Defendants or under their authority from using or disclosing any confidential information or trade secrets be-

longing to Virbac, including the Trade Secrets;

- (e) placing the U.S. Applications in a constructive trust for the benefit of Virbac under such terms as would enable Virbac to assume control over the prosecution until inventorship and ownership issues are resolved by USPTO;
- (f) enjoining Defendants and their employees, agents or other representatives and all persons in active concert or participation with Defendants or under their authority from prosecuting the U.S. Applications and the PCT Applications, or alternatively, from allowing the U.S. Applications and the PCT Applications to issue or to be abandoned without filing continuation patent applications in order to protect any remaining patentable rights Virbac may be able to secure;
- (g) placing all revenues, contracts, and other benefits flowing to Defendants from their use of the Trade Secrets and sale of Products in a constructive trust for the exclusive benefit of Virbac;
- (h) requiring Defendants to return all tangible manifestations of the Trade Secrets and Products to

Virbac; and

- (i) enjoining Defendants from using the Trade Secrets or the Products in any fashion or form.

**Count XI.**  
**Declaratory Relief**

115. Virbac respectfully requests that this Court issue an order, pursuant to 28 U.S.C. §2201, declaring:

- (a) That Virbac is the sole owner of the Trade Secrets and the Products.
- (b) That Defendants have no ownership or other rights in the Trade Secrets and the Products.

**Count XII.**  
**Attorney's Fees**

116. The foregoing paragraphs are incorporated by reference.

117. Virbac is entitled to recover its reasonable and necessary attorneys' fees, expenses, and court costs, pursuant to 15 U.S.C. §1117(a). More specifically, Virbac is entitled to a recovery of its attorneys' fees in this case because Defendants' actions as described above, were fraudulent, deliberate, willful and intentional. Accordingly, this case is "exceptional" under 15 U.S.C. §1117(a).

**Count XIII.**  
**Demand for Trial By Jury**

118. Pursuant to Fed. R. Civ. P. 38, Plaintiff respectfully demands a trial by jury in this cause.

**VI. PRAYER FOR RELIEF**

119. Plaintiff adopts and incorporates by reference all foregoing paragraphs. Wherefore, premises considered, Plaintiff Virbac Corporation respectfully requests that the Court issue an order:

(1) awarding Virbac all of its actual damages against Defendants Hartz and Chanelle, which exceed \$75,000, to the extent ascertainable, together with punitive, consequential, and incidental damages, and all pre- and post-judgment interest allowed by law;

(2) Grant Virbac the declaratory relief sought herein and enter an Order consistent with that relief;

(3) Grant Virbac the injunctive relief sought herein and enter Orders against Defendants Hartz and Chanelle consistent with that relief; and

(4) Grant Virbac such other and further relief to which it shows itself entitled.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF VIRBAC  
CORPORATION

s/Paul Breene

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Telephone: (212) 508-6100

ADMITTED PRO HAC VICE

**CERTIFICATE OF MAILING UNDER 37 CFR 1.10**

"Express Mail" Mailing Label Number: \_\_\_\_\_

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" service with sufficient postage on the date indicated below and is addressed to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date \_\_\_\_\_

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s):	Burke, et al.	Confirmation No:	1293
Application No.:	10/567,635	Examiner:	Unassigned
Filing Date:	Feb. 8, 2006	Group Art Unit:	Unassigned
Title:	Improved Anthelmintic Formulations	Atty Docket No:	085882.000025 (257122/0092)

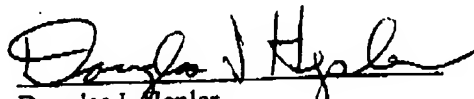
**STATEMENT OF ADDED INVENTOR HEPLER UNDER 37 CFR 1.497(D)(1)**

I am a person being added as an inventor to the above-identified patent application.

Any error in inventorship in the international application upon which the above-identified application depends occurred without deceptive intention on my part.

Respectfully submitted,

Date: February 12, 2007

  
Douglas I. Hepler

HOUSTON2042225.1

## POWER OF ATTORNEY

The undersigned, The Hartz Mountain Corporation and Virbac Corporation, are the joint assignees and owners of record of the entire interest in the patent applications named in the attached Schedule A on a 50/50 undivided basis, and hereby appoint:

Ben D. Tobor, Reg. No. 27,760  
Albert B. Kimball, Jr., Reg. No. 25,689  
Jeffrey S. Whittle, Reg. No. 36,382  
Chris D. Northcutt, Reg. No. 55,908  
Linda L. Morgan, Reg. No. 53,347

James E. Bradley, Reg. No. 27,536  
Constance G. Rhebergen, Reg. No. 41,267  
Anthony F. Matheny, Reg. No. 43,778  
Corey B. Blake, Reg. No. 52,624  
Jade O. Laye, Reg. No. 54,255

jointly and severally, each an attorney or agent of the firm of Bracewell & Giuliani LLP, as their attorney or agent, with full power of substitution and revocation, to prosecute these applications, to make alterations and amendments therein, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Letters Patents. All previous powers, if any, are hereby revoked. This power of attorney may be revoked as provided by the provisions of 37 C.F.R. § 1.36.

Please direct all communications to:

Corey B. Blake  
Bracewell & Giuliani LLP  
P.O. Box 61389  
Houston, Texas 77208-1389  
(713) 221-1515 direct phone  
(713) 222-3215 direct fax  
[corey.blake@bracewellgiuliani.com](mailto:corey.blake@bracewellgiuliani.com)

Max C. Marx  
THE HARTZ MOUNTAIN CORPORATION

By: Max C. Marx  
Corporate General Counsel & Corporate  
Secretary

Sean M. Nelson  
VIRBAC CORPORATION  
By: Sean M. Nelson  
Title: Director

## Schedule A

### Patent Applications

1. U.S. Application No. 10/637,807; Pub. No. US-2005-0032718  
Entitled: "Anthelmintic Formulation"  
Filed: August 8, 2003
2. U.S. Application No. 10/800,407; Pub. No. US-2005-0032719  
Entitled: "Improved Anthelmintic Formulations"  
Filed: March 12, 2004
3. U.S. Application No. 10/910,504; Pub. No. US-2005-0203034  
Entitled: "Multi-Action Anthelmintic Formulations"  
Filed: August 3, 2004
4. U.S. Application No. 10/567,635  
Entitled: "Improved Anthelmintic Formulations"  
Filed: February 8, 2006

**DECLARATION AND POWER OF ATTORNEY FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address, and citizenship are as stated below next to my name.

I believe that I am the original, first and sole inventor, if only one listed below, or co-inventor if more than one inventor is listed below, of the subject matter which is claimed and for which a patent is sought on the invention titled **IMPROVED ANTHELMINTIC FORMULATIONS**, the specification of which: (check one)

☐

is attached hereto;

☒

was filed on February 8, 2006, as Application Serial No. 10/567,635.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment(s) referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulation, § 1.56(a) for this application.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or provisional application(s) listed below and have also identified below any foreign application for patent or inventor's certificate or provisional application(s) having a filing date before that of the application on which priority is claimed:

COUNTRY	APPLICATION NUMBER	DATE OF FILING	PRIORITY CLAIMED UNDER 35 USC § 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

APPLICATION SERIAL NUMBER	FILING DATE	STATUS (PATENTED, PENDING, OR ABANDONED)
PCT/US2004/025005	08/03/2004	PENDING as of filing date
US 10/637,807	08/08/2003	PENDING

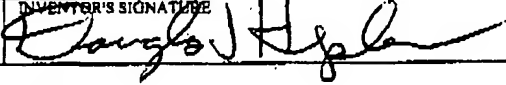
I hereby appoint the following attorneys and/or agents, jointly and severally, to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:

Jeffrey S. Whittle, Reg. No. 36,382;	Albert B. Kimball, Jr., Reg. No. 25,689;
James E. Bradley, Reg. No. 27,536;	Ben D. Tobor, Reg. No. 27,760;
Constance G. Rhebergen, Reg. No. 41,267;	Michael E. Noe, Reg. No. 44,975;
Jade Laye, Reg. No. 54,255;	Corey B. Blake, Reg. No. 52,624;
Linda L. Morgan, Reg. No. 53,347;	Anthony F. Matheny, Reg. No. 43,778;

Please direct all correspondence and telephone calls to:

Jeffrey S. Whittle  
BRACEWELL & GIULIANI LLP  
P. O. Box 61389  
Houston, Texas 77208-1389  
Telephone: (713) 221-1185  
Facsimile: (713) 221-2141  
jeffrey.whittle@bracewellgiuliani.com

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

FULL NAME OF CO-INVENTOR	INVENTOR'S SIGNATURE	DATE
Douglas I. Hepler		02/12/2007
RESIDENCE	CITIZENSHIP	
815 Cliff Drive, McLeansville, NC 27301	United States	
MAILING ADDRESS		
Same		

FULL NAME OF CO-INVENTOR <b>Joseph M. Lockhart</b>	INVENTOR'S SIGNATURE	DATE
RESIDENCE <b>2101 Whirlabout Way, Raleigh, NC 27613</b>	CITIZENSHIP <b>United States</b>	
MAILING ADDRESS <b>Same</b>		

FULL NAME OF CO-INVENTOR <b>Albert Ahn</b>	INVENTOR'S SIGNATURE	DATE
RESIDENCE <b>43 Talbot Court, Short Hills, NJ 07078</b>	CITIZENSHIP <b>United States</b>	
MAILING ADDRESS <b>Same</b>		

FULL NAME OF CO-INVENTOR <b>Ian William Cottrell</b>	INVENTOR'S SIGNATURE	DATE
RESIDENCE <b>10 Spencer Road, Basking Ridge, NJ 07920</b>	CITIZENSHIP <b>United Kingdom</b>	
MAILING ADDRESS <b>Same</b>		

**ASSIGNMENT**

WHEREAS, we, **DOUGLAS I. HEPLER**, and **JOSEPH M. LOCKHART**, (hereinafter referred to as "**ASSIGNORS**"), have made certain improvements or inventions in a patent application titled **IMPROVED ANTHELMINTIC FORMULATIONS**, filed on February 8, 2006, and having Application Serial No. 10/567,635 (hereinafter "**Patent Applications**"); and

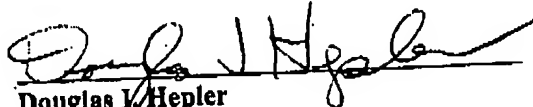
WHEREAS, **THE HARTZ MOUNTAIN CORPORATION**, having offices at 400 Plaza Drive, Secaucus, New Jersey 07094-3688, and **VIRBAC CORPORATION**, having offices at 3200 Meacham Boulevard, Fort Worth, Texas 76137 (hereinafter referred to as "**ASSIGNEES**"), are desirous of acquiring the same, to be jointly owned by **ASSIGNEES** on a 50/50 undivided basis;

NOW, THEREFORE, This Indenture Witnesseth: That for good and valuable consideration, receipt whereof is hereby acknowledged, said **ASSIGNORS** do hereby sell, assign and transfer to said **ASSIGNEES**, their successors and assigns, all right, title and interest in and to said Patent Applications set forth above, the invention or inventions therein shown and described and any improvements on said invention heretofore or hereafter made, any divisions or continuations of said Patent Applications, and all patents, United States and foreign, to be granted upon any such applications or for the invention or inventions thereof, any reissues, reexaminations, continuations or extensions of said patents, and all rights for past infringement related to any patents issued or to be issued thereon; and said **ASSIGNORS** do hereby authorize and request the Commissioner of Patents to issue all patents on said Patent Applications or for the invention or inventions hereof, in accordance with this assignment.

And said **ASSIGNORS** for said consideration hereby covenant and agree that the said **ASSIGNORS** are the owners of the title herein conveyed and have the right to convey the same, and agree that said **ASSIGNORS** will communicate to said **ASSIGNEES** any facts known to said **ASSIGNORS** respecting said invention or inventions, and testify in any legal proceedings when called upon by said **ASSIGNEES**, sign all lawful papers deemed by said **ASSIGNEES** as expedient to vest in them the legal title herein sought to be conveyed or for the filing and prosecution of all applications and patents, United States and foreign, including any disclaimers related thereto, and otherwise aid said **ASSIGNEES**, their successors and assigns, in obtaining full patent protection on said invention and enforcing proper protection under said patents, but in

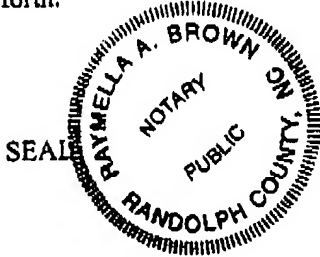
every instance at the ASSIGNEES' expense.


IN WITNESS WHEREOF, I have hereunto set my hand and seal this 12th day of February,  
2007.

  
Douglas I. Hepler

STATE OF N.C. §  
COUNTY OF Randolph §

On this 12th day of February, 2007, before me personally appeared the above named ASSIGNOR, Douglas I. Hepler, to me personally known/provided identification (Driver's License) as the individual who executed the foregoing assignment, and who acknowledged to me that he executed the same or his own free will for the purposes therein set forth.



  
Notary Public  
My commission expires: 5/9/2011

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**Joseph M. Lockhart**

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